IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1197 of 2004
with
CIVIL APPLICATION NOS. 2652, 2654, 1985 & 2006 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE CO-OPERATIVE MARKETING FEDERATION LIMITED
Versus
GUJCOMASOL STAFF ASSOCIATION

Appearance:
1. Special Civil Application No. 1197 of 2004
MR GM JOSHI for Petitioner No. 1
MR MUKUL SINHA for Respondent No. 1
..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 07/04/2004

ORAL JUDGEMENT

Rule. Mr.Sinha waives service of notice on behalf of respondents. With the consent of learned advocates appearing in the SCA as well as CAs matter is taken up for final hearing today.

2. The main Special Civil Application has been preferred by the petitioner for challenging the legality and validity of the award passed by the tribunal, dated 20.12.2003 whereby the tribunal has fixed the age of retirement as 60 years, but it is ordered that those employees who have retired after 13.5.03 shall be entitled to reinstatement and continuation in service upto the age of 60 years, but they would not be entitled to wages prior to reinstatement.

3. On 4.3.04 the learned counsel appearing for the petitioner Mr.Nanavaty with Joshi and Mr.Sinha who appeared by caveat were heard and the matter was put up for dictation of the order on 9.3.04. Thereafter, it was reported to the court by the learned counsel appearing for both sides that the matter is under consideration for settlement between the petitioner and the respondent union and the time was taken. In the mean time, the CA Nos.2652/04, 1985/04 and 2006/04 have been preferred by certain employees contending that they are the beneficiaries of the award passed by the tribunal and they expressed the apprehension that the settlement may not be arrived at in the proceedings before this court between the federation and the union which frustrating or prejudicing their rights.

4. Today, when the matter is taken up for dictation of order Mr.Nanavaty learned counsel for the petitioner as well as Mr.Sinha learned counsel for the union has placed on record the settlement entered into by and between the petitioner and the union on 25.3.04 under section 2 (P) read with section 18(3) of I.D.Act whereby it is, interalia, agreed to accept the age of retirement as of 58 years and the effect to this settlement is to be given from 1.3.04. The Ld.counsel appearing for the petitioner as well as respondents prayed the court that the award passed by the tribunal be modified in terms of settlement, dated 25.3.04 copy whereof is produced on record.

5. I would have considered the matter for modification of the award in terms of settlement dated 25.3.04, however, the learned counsel appearing for the

applicants, mainly, Mr.Mehta and Ms.Chitaliya submitted that if the award is modified by this court in terms of settlement, it may frustrate the rights of their clients who are applicants in respective applications because the rights have already accrued to their respective clients and they further submitted that the settlement is neither binding to their clients nor the same is just and reasonable. It was submitted by Mr.Mehta and Ms.Chitaliya that if their respective clients are reinducted in service so as to enable them to continue upto the age of 58 years, they may not object to the modification of the award in terms of settlement. Whereas, Mr.Nanavaty appearing for the petitioner submitted that as such the settlement is by way of a package deal and even if some members of the union are not agreeable to the settlement, the settlement is binding to all concerned. He also submitted that if the matter is ordered to be remanded to the tribunal for reconsideration on the ground that the settlement is binding to the applicants herein or not, and on the ground as to the settlement fair and reasonable or not, the liberty may be reserved to the petitioner federation to back out from the whole settlement in case the tribunal finds that the settlement is unfair or unreasonable.

6. The Ld.counsel for the union Mr.Sinha has no objection if the matter is remanded to the tribunal for considering the binding effect of the settlement and for considering the fairness of the settlement.

7. In view of the aforesaid, I find that since there is a settlement under section 2(P) read with section 18(3) of the I.D.Act between the federation and the union who raised the dispute before the tribunal on the question of fixation of age of retirement, the present impugned award passed by the tribunal deserves to be set aside and the matter deserves to be remanded to the tribunal for reconsideration of the issue in view of settlement, dated 25.3.2004 as well as in view of objections raised by the learned counsel appearing for concerned applicants. Even otherwise also the tribunal has fixed the age of retirement as that of 60 years whereas the respondent union has now agreed for fixing the age of retirement as that of 58 years and in that context the tribunal will have to reconsider the matter for passing award in terms of settlement or otherwise. While considering the said issue and passing the award in terms of settlement the applicants herein of CA Nos 2652, 2654, 1985 and 2006/04 can raise their objections

regarding binding effect of settlement and may also contend that the settlement is not just and fair. If such contentions are raised, it will be for the federation to defend such contentions and it will be for the tribunal to decide the said aspects in accordance with law after hearing both sides.

8. In the above circumstances, I am of the view that the following directions shall meet with the ends of justice:

(i) The award passed by the tribunal, dated 20.12.2003 in Ref (IT) No.127/03 is quashed with further direction to the tribunal to reconsider the matter in terms of settlement dated 25.3.04 entered into between the the petitioner-federation and the union.

(ii) It is clarified that while reconsidering the matter in terms of settlement, the tribunal shall give opportunity of hearing to the applicants of CA Nos 2652, 2654,1985 and 2006/04 and it would be open to the tribunal to decide the question regarding the binding effect of the settlement and also as to whether the settlement is just and fair or not.

(iii) The tribunal shall pass the consequential order on the basis of aforesaid as early as possible preferably within a period of six months from the date of receipt of writ of this court.

9. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. In the facts and circumstances of the case there shall be no order as to costs.

10. Mr.Mehta as well as Ms.Chitaliya voiced grievance that on account of pendency of this litigation the retiral benefits which otherwise would accrue to their clients may be paid without prejudice to the rights and contentions in the reference before the tribunal. Mr.Nanavaty learned counsel for the federation has declared that such payment shall be made without prejudice to the rights and contentions to the applicants concerned within a period of two months from today. Hence, on said aspect no further order is required to be passed.

11. In view of the order in main petition no separate order is required to be passed in civil applications and hence all the civil applications stand disposed of

accordingly.

7.4.04 (JAYANT PATEL,J)